

**REMARKS**

Claims 9 to 26 have been added, and therefore claims 5 to 26 are currently pending in the present application.

In view of this response, it is respectfully submitted that all of the presently pending claims are allowable, and reconsideration is respectfully requested.

*The Office Action Summary does not acknowledge the claim for foreign priority nor receipt of a certified copy of the priority document. In this regard, a claim of priority to Application No. DE 103 56 673.2, filed in the Federal Republic of Germany on December 4, 2003 was made in the "Declaration and Power of Attorney," submitted in the present application on June 1, 2006, and a certified copy of the priority document was submitted in the parent application. It is respectfully requested that the Examiner acknowledge the claim for foreign priority and receipt of the certified copy of the priority document in the next Office communication.*

With respect to paragraph two (2) of the Office Action, claims 5 to 8 were rejected as indefinite under the second paragraph of 35 U.S.C. § 112.

While the rejections may not be agreed with, to facilitate matters, claims 5 and 7 have been rewritten to better clarify the claimed subject matter. As regards the terms and phrases cited in the Office Action as "indefinite and unclear in context", it is respectfully submitted that the cited terms and phrases are definite and clear as used and as would be understood when each of the rejected claims is read in view of the specification -- which is the proper objective standard. It is respectfully submitted that the cited terms and phrases are therefore definite, especially to a person having ordinary skill in the art, in view of the foregoing, as well as the remainder of the specification.

In view of the above, it is respectfully submitted that the presently pending claims comply with the second paragraph of § 112 since a person having ordinary skill in the art would understand what is claimed when the claim is read in view of the specification. See Miles Labs., Inc. v. Shandon, Inc., 997 F.2d 870, 27 U.S.P.Q.2d 123 (Fed. Cir. 1993). In this regard, it is also noted that terms in a claim are to be understood in view of the specification. (See In re Weiss, 26 U.S.P.Q.2d 1885, 1887 (Fed. Cir. 1993) (when interpreting a claim term or phrase, one must "look to the specification for the meaning ascribed to that term"; Board reversed) (unpublished decision); *In re Okuzawa*, 190 U.S.P.Q. 464, 466 (C.C.P.A. 1976)

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(“claims are not to be read in a vacuum, and limitations therein are to be interpreted in light of the specification”; Board reversed; emphasis in original) (citing *In re Royka*, 180 U.S.P.Q. 580, 582-83 (C.C.P.A. 1974) (claims are “not to be read in a vacuum” and “their terms still have to be given the meaning called for by the specification of which they form a part”; Board reversed; emphasis in original); and *In re Rohrbacher*, 128 U.S.P.Q. 117, 119 (C.C.P.A. 1960) (an “applicant is his own lexicographer and words used in his claims are to be interpreted in the sense in which they are used in the specification”; Board reversed)).

Approval and entry are respectfully requested, as is withdrawal of the indefiniteness rejections.

With respect to paragraph four (4) of the Office Action, claims 5 to 8 were rejected under 35 U.S.C. § 102(b) as anticipated by U.S. Patent No. 4,872,729 (“Arikawa”).

As regards the anticipation rejections of the claims, to reject a claim under 35 U.S.C. § 102, the Office must demonstrate that each and every claim feature is identically described or contained in a single prior art reference. (*See Scripps Clinic & Research Foundation v. Genentech, Inc.*, 18 U.S.P.Q.2d 1001, 1010 (Fed. Cir. 1991)). As explained herein, it is respectfully submitted that the Office Action does not meet this standard, for example, as to all of the features of the claims. Still further, not only must each of the claim features be identically described, an anticipatory reference must also enable a person having ordinary skill in the art to practice the claimed subject matter. (*See Akzo, N.V. v. U.S.I.T.C.*, 1 U.S.P.Q.2d 1241, 1245 (Fed. Cir. 1986)).

As further regards the anticipation rejections, to the extent that the Office Action may be relying on the inherency doctrine, it is respectfully submitted that to rely on inherency, the Office must provide a “basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic *necessarily* flows from the teachings of the applied art.” (*See* M.P.E.P. § 2112; emphasis in original; and *see Ex parte Levy*, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Int’f. 1990)). Thus, the M.P.E.P. and the case law make clear that simply because a certain result or characteristic may occur in the prior art does not establish the inherency of that result or characteristic.

While the rejections may not be agreed with, to facilitate matters, claim 5 has been rewritten to provide that *the control device is operable to determine a maximum value for a difference of the brake pressures on the front wheels by multiplying the difference of the brake pressures on the front wheels by a value which is smaller than 1*. Support for the

features may be found in the Substitute Specification (e.g., at page 3, lines 8 to 22; and page 4, lines 4 to 11).

The Arikawa reference does not identically disclose (or even suggest) the features in which *the control device is operable to determine a maximum value for a difference of the brake pressures on the front wheels by multiplying the difference of the brake pressures on the front wheels by a value which is smaller than 1*, as provided for in the context of claim 5.

As to the cited text column 10, lines 50 to 63 of Arikawa, the cited sections merely indicate that brake fluid pressures of the front wheels may be reduced. Nowhere does the cited section of Arikawa even refer to a difference of the brake pressures at each of the front wheels -- much less a maximum value for such a difference. Thus, the cited section of Arikawa does not identically disclose (or suggest) the above-recited feature, as provided for in the context of claim 5.

Further, column 12, line 56 to column 13, line 61 of Arikawa indicates a situation in which right side wheels of a vehicle experience slippage, whereas left side wheels of the vehicle do not. In this situation, Arikawa states that brake pressure on right side wheels may be constant or decrease, whereas the brake pressure on left side wheels "continues to rise." (Arikawa, col. 13, lines 5 to 12). Moreover, Arikawa states that brake fluid pressure of each of the front wheels is "independently controlled." (Arikawa, col. 13, lines 59 to 61).

Thus, nowhere does Arikawa even refer to a maximum value for a difference of the brake pressures on the front wheels, since the brake pressures are merely "independently controlled" to prevent slippage. Therefore, Arikawa does not identically disclose (or even suggest) the features in which *the control device is operable to determine a maximum value for a difference of the brake pressures on the front wheels by multiplying the difference of the brake pressures on the front wheels by a value which is smaller than 1*, as provided for in the context of claim 5.

Accordingly, it is respectfully submitted that claim 5, as presented, is allowable, as are its dependent claims.

Claim 7, as presented, includes features similar to those of claim 5, as presented, so that claim 7, as presented, is allowable for essentially the same reasons, as are its dependent claims.

Accordingly, it is respectfully submitted that claims 5 to 8 are allowable.

New claims 9 to 26 add no new matter and are fully supported by the present application, including the Substitute Specification (e.g., at page 3, lines 10 to 27; page 4, lines 4 to 11, and 27 to 30; and page 5, lines 1 to 14). It is respectfully submitted that claims 9 to 17 and claims 18 to 26, which respectively depend from claims 5 and 7, respectively, are allowable for the same reasons as their respective base claims, and for the further reason that they include combinations of features not disclosed or suggested by the applied references.

In sum, claims 5 to 26 are allowable.

**CONCLUSION**

It is therefore respectfully submitted that all of the presently pending claims are allowable. It is therefore respectfully requested that the rejections (and any objections) be withdrawn, since all issues raised have been addressed and obviated. An early and favorable action on the merits is therefore respectfully requested.

Respectfully submitted,

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